

CONFIDENTIAL

Office Memorandum • UNITED STATES GOVERNMENT

TO : ~~EDT~~ Mr. Vernon

DATE: March 26, 1952

FROM : E/L - Mr. Swayzee

SUBJECT: Labor Clause in Japanese FCN Treaty

In accordance with your request, Phil Sullivan and I have been exploring at some length the kind of labor clause that might be inserted in the Japanese FCN treaty. It should be clear that we have relied very heavily upon wording which appears in Article 7 of the ITO Charter. We are not committed to each and every word that appears but we are agreed that the ideas contained in the proposed draft should be included and that they are ideas which would have a reasonable chance of acceptance by the Japanese.

Our suggested draft is as follows:

"Each of the contracting parties recognizes that unfair labor conditions, particularly in production for export, create difficulties in international trade, and accordingly each of the contracting parties agrees to establish and maintain, in so far as appropriate and feasible, within its own territory fair labor standards with respect to wages, hours, and conditions of work. *in the export industries.*

"In establishing minimum fair labor conditions each of the contracting parties agrees to be guided by International Labor Organization standards."

It should be understood that neither Phil nor I have cleared this proposed draft within our respective Bureau.

CDC - Econ. Criteria - Each P. to pay labor a reasonable portion for its contribution.

E/L: COSwayzee:ras

Fair Labor Standards - ITO Charter

Art. VII

DEPARTMENT OF STATE A/CDC/MR	
REVIEWED BY <i>[Signature]</i>	DATE <i>2-30-82</i>
RDS ☐ OF XDS ☐ EXT. DATE	TS AUTH.
ENDORSE EXISTING MARKINGS ☐	
DECLASSIFIED ☐ - RELEASABLE ☒	REASON(S)
RELEASE DENIED ☐	
PA & FOI EXEMPTIONS	

AIR PRIORITY
PRIORITY

CONFIDENTIAL
(SECURITY INFORMATION)
(Security Classification)

DO NOT TYPE IN THIS SPACE

FOREIGN SERVICE DESPATCH

611.944/3-2752

FROM : USPOLAD, Tokyo

1331
DESP. NO.

TO : THE DEPARTMENT OF STATE, WASHINGTON.

REF : Department's Airgram A-439 of December 31, 1951

March 27, 1952

4 For Dept. Use Only mcb	ACTION	DEPT.	IN F O	DCR	REP	FE	OLI	L
	REC'D APR 4	OTHER						

SUBJECT: Informal Discussions on FCN Treaty with Japan

Enclosed are copies of Memoranda of Conversation for the first two informal meetings (February 25 and 27, 1952) between representatives of the Ministry of Foreign Affairs and this Mission on the Department's standard draft FCN Treaty. The delay in forwarding these memoranda to the Department is regretted, but it was not until the past few days that the Japanese furnished the Mission with their proposed revisions of the original drafts.

Although these memoranda are prepared by the Mission, drafts are submitted to the Ministry of Foreign Affairs for comment or concurrence, as suggested in the Department's A-439. The final copies - to be initialled by both sides - will then be an accurate report on the various points clarified during the present informal discussions. Despite the fact that these memoranda reveal a number of questions which have been deferred pending further study by the Japanese, it is hoped that most of these will be resolved after the standard draft has been discussed in its entirety.

The Mission will transmit each memorandum of conversation as soon as a final draft is accepted by the Japanese. A complete set of initialled memoranda in single copy will also be forwarded to the Department at the conclusion of the present discussions. Another initialled copy will be retained in the Mission files, and two copies will be handed to the Ministry of Foreign Affairs.

It is hoped that, as soon as possible after receipt of this and subsequent despatches enclosing these memoranda of conversation, the Department will inform the Mission of any respects in which the Mission's interpretations are not in accord with the Department's views. Any comments or further clarification on the points deferred by the Japanese would also be appreciated. The Mission proposes to hold one or more review meetings at the end of this round of informal talks, at which time the Department's comments or interpretations can be made of record. In addition the questions pending on the Japanese side will be reviewed and those points which may remain for negotiation identified.

With respect to the first two meetings (memoranda enclosed), the Department's comments are requested on the following points:

a. In view of the many Japanese arguments with respect to "unconditional most-favored-nation treatment", is there any objection to acceptance of their under-

WAdams:nll
REPORTER

CONFIDENTIAL
(SECURITY INFORMATION)

ACTION COPY - DEPARTMENT OF STATE

MAR 31 1952

This office must return this permanent record copy to DC/R files with an endorsement of action taken.

MESSAGE CENTER
CONTROL

14 OUT

611.944/3-2752

UNCLASSIFIED

standing that the phrase (to be unchanged in the English text) may be translated into Japanese as "based in general upon the principles of national and unconditionally accorded most-favored-nation treatment"? (see page 5, Enclosure 1.)

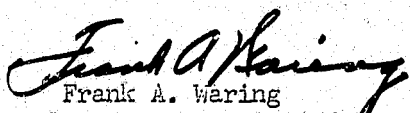
b. May the Mission inform the Japanese at the final meeting of the present round of discussions that their modification of the Preamble (which would then read in part "promoting mutually advantageous commercial intercourse, encouraging mutually beneficial investments, and establishing mutual rights and privileges") is acceptable? (See pages 3 to 5, Enclosure 1. The Department's A-439 stated that no objection was perceived to this change.)

c. In view of the Japanese suspicion of the word "equitable" in Article I (see pages 5 to 7, Enclosure 1, for their many arguments on this point which has alone taken three or four days' discussion), is there any word or phrase that would constitute an acceptable substitute in the English text? (It is understood that no such substitute would be offered the Japanese except as a last resort to prevent this issue from becoming a point for negotiation.)

d. It will be noted that the Japanese continue to press for inclusion of the most-favored-nation standard in paragraph 1 (b), Article II, despite a detailed presentation of the views contained in the Department's A-439 (see pages 7-8, Enclosure 1, and page 3, Enclosure 2). Although it is hoped that the Japanese will ultimately accept paragraph 1 (b) in its present form, any additional comments from the Department would be appreciated.

e. With respect to Article III, the Japanese continue to question the "international law" concept of paragraph 1, and have suggested that the national-treatment concept suffice (see page 4, Enclosure 2). They also seem reluctant to accept paragraph 2 of this Article without inclusion of the words "is accused of crime" (see pages 4 and 5, Enclosure 2). Although both these proposals have been countered with arguments supplied in the Department's A-439, the Department's further consideration and comments with respect to these points will be appreciated.

For the Charge d'Affaires ad interim:


Frank A. Waring
Counselor for Economic Affairs

Enclosures: *A-1*

- ✓ 1. Memorandum of Conversation
of First Informal Meeting
February 25, 1952.
- 1 2. Memorandum of Conversation
of Second Informal Meeting
February 27, 1952.

RESTRICTED

(Classification)

MEMORANDUM OF CONVERSATION

Subject: Informal Discussions on the United States Standard Draft
Treaty of Friendship, Commerce and Navigation

Participants: For the Ministry of Foreign Affairs:

Mr. Morio YUKAWA, Director of the Bureau of Economic Affairs
Mr. Kenichi OTABE, Vice Director, Bureau of Economic Affairs
Mr. Haruki MORI, Chief, First Section, Bureau of Economic
Affairs
Mr. Masao OSATO, Chief, Fourth Section, Treaty Bureau
Mr. Takeshi KANEMATSU, Secretary, First Section, Bureau of
Economic Affairs
Mr. Kay MIYAGAWA, Secretary, First Section, Bureau of
Economic Affairs

For the Office of the United States Political Adviser, Japan:

Mr. Frank A. WARING, Counselor for Economic Affairs
Mr. Jules BASSIN, Legal Attache
Mr. Dudley G. SINGER, Commercial Attache
Mr. Robert W. ADAMS, Second Secretary

Place: Office of the United States Political Adviser, Tokyo, Japan.

Date: Monday, February 25, 1952.

FIRST INFORMAL MEETING

Mr. Waring greeted Mr. Yukawa and his fellow representatives and expressed the hope that the informal discussions about to begin on the proposed Treaty of Friendship, Commerce and Navigation between Japan and the United States would prove to be mutually satisfactory. Mr. Waring added that the various questions raised by the Japanese representatives during the preliminary and exploratory talks on December 4 to 26, 1951 could now doubtlessly be resolved in view of the sympathetic and careful study given these by the Department of State. The detailed comments received from the latter would, in Mr. Waring's opinion, be most helpful in the present informal discussions.

Mr. Waring added that he took this opportunity to reassure the Japanese representatives that the proposed Treaty under discussion is altogether a standard draft, identical in all particulars with that currently proposed by the United States for negotiation with other countries. Knowing that this question had been raised by the Japanese representatives during the exploratory talks in December, Mr. Waring stated that any differences between the draft under discussion and recently signed treaties reflect, in part, revisions

RESTRICTED

RESTRICTED

(Classification)

resulting from further study and from experience gained through negotiation, and have been adopted in the interests of improving the readability and adequacy of the standard draft as a general basis for negotiation. Some differences reflect individual modifications and adjustments which have been formulated during the course of a particular negotiation in the process of adapting the standard draft on a mutually satisfactory basis to the views and circumstances of the particular country concerned.

*Article XXVII
indicates
the origin*

Mr. Waring further stated that the standard draft Treaty under discussion has now reached an advanced stage of evolution, but that the process of evolving ways in which it may be still further improved has not ceased. He pointed to amendments to the standard draft recently received from the Department of State as an indication of the continued refinements and improvements sought. Mr. Waring invited the attention of the Japanese officials to the new paragraph, the inclusion of which in Article X of the Treaty is proposed, as well as to the suggested paragraph (temporarily designated 3-bis) for addition to the proposed Protocol. Although material of the nature covered by the suggested addition to the Protocol has not heretofore been standard in United States treaty practice, the Department of State saw merit in the suggestion advanced by the Japanese representatives in Article XXVII of the proposed Japanese draft. Mr. Waring stated that the inclusion of this new provision - based on the Japanese suggestion - is an example of the continuing efforts towards improvement of the standard draft.

Mr. Waring then referred to questions previously raised by the Japanese representatives during the exploratory talks in December regarding any possible relationship between the proposed Treaty and the two immigration and naturalization bills (S.2055 and H.R. 5678) presently before the United States Congress. Mr. Waring explained that these bills are the culmination of long labor and study by the competent congressional committees and of exhaustive public hearings, and are now in a very advanced stage of development. Although Congressional action cannot be forecast, said Mr. Waring, informed observers expect legislation along the lines of these bills to be enacted during the current year. The Department of State firmly supports that feature of these bills which repeals the Act of May 26, 1924, removes the bar to naturalization of Japanese, and authorizes an immigrant quota for Japanese.

Mr. Waring stressed, however, that it was essential in the present discussions clearly to understand that the standard draft Treaty, presented in the December discussions, was formulated for general use with other countries long before a negotiation with Japan was contemplated. This Treaty - perfectly straight-forward in all its parts and provision - stands on its own provisions, irrespective of the Act of 1924. Although the more technical aspects of the Treaty provisions would be further clarified in the present discussions, Mr. Waring emphasized that the proposed Treaty would if ratified become the supreme law of the land, enforceable as such before the courts of the United States, and would be paramount over existing state legislation. He added that the conclusion of the proposed Treaty - based as it is on the very highest principles of justice, morality and equal dealing - would hardly be possible except under psychological conditions opposite to those which led to the Act of 1924. Mr. Waring pointed out that this Treaty in and of itself - apart from any action with respect to

RESTRICTED

RESTRICTED

(Classification)

the Act of 1924 - would gain for Japan the same high objective represented by the possible repeal of that Act.

Mr. Waring stated that it should be clearly understood that the informal conversations about to begin are on an ad referendum basis, and that any changes in the standard draft or the counterproposals thereto which might be discussed during these meetings are, of course, subject to subsequent formal acceptance by both Governments. Mr. Waring added that informal discussions of this kind often effectively dispose of many points which may not again be raised in the formal negotiations. The record of the preliminary discussions may therefore be the only record to which reference can be made in later years for the purpose of verifying the interpretation intended to be given some passage in the treaty. Mr. Waring suggested therefore that the Office of the United States Political Adviser prepare office-file memoranda of conversation covering the present discussions, which it would invite the Japanese representatives to inspect in rough draft for the purpose of noting any necessary corrections. Copies of the mutually approved memoranda duly initialed would then be furnished the Ministry of Foreign Affairs - for its own files and those of its Washington representatives - and other copies would be filed with the Department of State and the United States Mission in Tokyo.

Mr. Waring expressed his concern regarding press coverage of the present informal discussions, and pointed to the fact that these had already been reported by various Tokyo newspapers as "negotiations". Since every effort should be made to erase this misunderstanding on the part of the press, Mr. Waring suggested that no statements be released or interviews be granted to the press by either side without the prior concurrence of the other. He further suggested that press statements be issued jointly wherever possible. Mr. Yukawa agreed with Mr. Waring and further proposed that periodic statements with respect to the nature of, and the procedures to be followed in, the current conversations be released jointly by the Ministry of Foreign Affairs and the Office of the United States Political Adviser during the course of the informal discussions.

Mr. Adams inquired whether the Japanese Representatives desired to open the present informal conversation on the Department of State's standard draft of the Treaty of Friendship, Commerce and Navigation (hereinafter referred to as the standard draft or FCN Treaty) with a discussion of the Preamble. Mr. Yukawa replied in the affirmative and suggested that each provision of the FCN Treaty be discussed in its proper numerical order.

PREAMBLE

Mr. Yukawa stated that the phrase "promoting mutually advantageous commercial intercourse" should properly come before the phrase "encouraging mutually beneficial investments", since this would be a more logical sequence in his opinion. Mr. Adams stated that there appeared to be no objection to the inversion of these two phrases, and suggested that the standard draft be modified as proposed by Mr. Yukawa for the purpose of continuing the present informal discussions.

RESTRICTED

RESTRICTED

(Classification)

OK
Mr. Yukawa further stated that the word "otherwise" in the phrase "otherwise establishing mutual rights and privileges" was not clear to the Japanese side, and he proposed its deletion. Mr. Adams replied that this suggestion had also been made in the exploratory talks in December and had therefore been referred to the Department of State for comment. Mr. Adams added there appeared to be no objection to the deletion of the word "otherwise" and that it would be deleted for the purpose of the present discussions, (subject to formal acceptance by the Department of State).

Mr. Yukawa then referred to the phrase "the principles of national and of most-favored-nation treatment unconditionally accorded", and stated that he regarded national treatment, from its nature, unconditional, and that the Article should be drafted so that the adverbial phrase "unconditionally accorded" would not apply to national treatment. Mr. Yukawa proposed, therefore, that this phrase be amended to read "the principles of national and of unconditional most-favored-nation treatment".

Mr. Bassin replied that - in response to an earlier and similar suggestion from the Japanese side - the Department of State had indicated that it realized the Japanese side might perceive some novelty in phraseology stipulating "unconditional national treatment". The adjective "unconditional" is commonly placed in juxtaposition with most-favored-nation treatment only, but Mr. Bassin pointed out that the wording suggested in the standard draft avoids literally saying "unconditional national treatment". Mr. Bassin added that the Department of State wishes to establish the proposition in its standard draft that national treatment provisions are in general to be applied untrammelled by specific reciprocity qualifications. As an illustration Mr. Bassin referred to the national treatment clause occurring in paragraph 1 of Article IV of the FCN Treaty dealing with the subject of workmen's compensation. He stated that it might be that the laws of a state in the United States generally provide compensation for occupational diseases, whereas the laws of Japan might not. The United States position in this event would be that Japanese workmen in the United States would be entitled to the benefits provided by domestic law (for example, for silicosis) notwithstanding the fact that an American workman in Japan could not claim any such benefit because the Japanese law failed to cover silicosis. Mr. Singer stated that "national treatment" in the United States means the same treatment that American citizens receive in the United States, without reference to what Japanese subjects receive in Japan, and vice-versa. Mr. Singer added that in the opinion of the Department of State the national treatment obligation operates automatically and without conditions.

Mr. Yukawa and Mr. Otake declared that this concept of national treatment was acceptable to the Japanese side, and they agreed that Japan would grant national treatment in an unconditional manner. Both Mr. Otake and Mr. Mori stated that their question regarding the word "unconditionally" was based on the difficulty of translating this phrase into Japanese in such a manner as to avoid its juxtaposition with the words "national treatment".

Mr. Adams stated that the Department of State had found that the particular phraseology employed in the standard draft met this problem adequately, and

RESTRICTED

RESTRICTED

(Classification)

inquired whether the placing of the word "unconditionally" in the Japanese translation of the Preamble might not take into account the question raised by Mr. Yukawa. Mr. Singer then suggested that the phrase in question remain in its present form in the English language, and that the Japanese language text be so drafted as to avoid the use of the phrase "unconditional national treatment", but with the understanding that the meaning of the English text of the Preamble - as previously clarified by Mr. Bassin and himself - would not be changed.

Mr. Yukawa stated that it was agreeable to the Japanese side to permit this clause to remain in its present form in the English language. He added that the construction of the phrase "based in general upon the principles of national and of most-favored-nation treatment unconditionally accorded" was inappropriate in the Japanese language, and that, in order to avoid the juxtaposition of the words "unconditionally accorded" and "national treatment", this phrase would be translated into Japanese as "based in general upon the principles of national and unconditionally accorded most-favored-nation treatment". Since it had already been agreed by the Japanese side that national treatment would be extended by Japan in an unconditional manner, Mr. Yukawa asked whether the translation into Japanese, as specified above, would be accepted by the American side as an appropriate translation. Mr. Singer replied in the affirmative.

Mr. Bassin then asked if there were any other proposed changes besides those mentioned (which would amend the Preamble to read, in part, "promoting mutually advantageous commercial intercourse, encouraging mutually beneficial investments, and establishing mutual rights and privileges...."). Mr. Yukawa having replied that the Preamble with the changes proposed would be acceptable to the Japanese, Mr. Adams proposed that the discussions continue with Article 1 of the standard draft.

ARTICLE I

Mr. Yukawa declared that it was difficult for the Japanese side to grasp the meaning of the words "equitable treatment", and that - in his opinion - it would be still more difficult to apply such treatment in specific cases. Mr. Otabe pointed out that the Economic Council of the League of Nations had several times attempted to clarify the meaning of the phrase "equitable treatment" (as mentioned in Article 23 e of the Covenant of the League of Nations), but that no accepted agreement had been possible as to its specific application in view of the widely divergent views of member countries on the relation between most-favored-nation treatment and "equitable treatment". Mr. Yukawa further stated that if this phrase was intended merely to express the friendly relations between the two parties he believed it should be included in the Preamble, and that Article I could then be deleted.

Mr. Bassin replied that Article I is in part a link between the Preamble and the rest of the FCN Treaty, and that it introduces the Treaty by declaring the equitable purposes the Treaty is designed to serve. Mr. Bassin added that Article I additionally serves a further and two-fold purpose: it suggests that where two constructions of the FCN Treaty's provisions are equally possible in a given instance, the construction leading to an equitable - or just - result is to be

RESTRICTED

RESTRICTED

(Classification)

preferred. Mr. Bassin stated that this principle is in conformity with established doctrine, as followed by the courts in the United States, that treaties are to be construed and applied in a broad and liberal spirit. The second purpose accomplished by Article I is that it serves as a guiding principle in cases where the exact terms of the treaty's provisions do not afford complete and definitive guidance. Mr. Bassin illustrated this second point by stating that it has been standard practice to use the "equitable treatment" standard with respect to treaty rules on state trading (as covered in Article XVII, paragraph 2, of the standard draft), where it has not proved possible yet to devise a more precise ruling owing to the nature of the subject matter dealt with. Mr. Bassin added that the Department of State is of the opinion that it would probably be only in extreme or unusual cases that Article I could afford a basis for a treaty protest, independently of the other provisions of the Treaty, since the more exact legal rules of the latter define the normal commitments the two countries will have undertaken.

In response to further mention by Mr. Otabe and Mr. Mori of the difficulties encountered in the League of Nations with the phrase "equitable treatment", Mr. Adams stated that the Department of State is fully aware that the word "equitable" is not a precise term, but that its usage established the spirit of friendly and just dealing which is the purpose of the FCN Treaty. Mr. Adams added that this term is not a novel one in current international usage, and that the term is to be found in the ITO Charter and in other international instruments, in the FCN Treaties recently concluded by the United States with other countries, and in recent standard literature dealing with international law and justice. Mr. Adams suggested that the Japanese representatives think of "equitable treatment" in terms of "fair, just and non-discriminatory treatment" in attempting to understand the purpose of Article I, which he further defined as the "friendship provision" of the FCN Treaty.

Mr. Otabe and Mr. Kanematsu stated that they believed "equitable treatment" might be interpreted as establishing a new standard of treatment in addition to national and most-favored-nation treatment, and that they questioned whether the granting of national and/or most-favored-nation treatment is not sufficient when such obligations are required under each standard draft Article. Mr. Otabe stated that the term "equitable treatment" might prove to be controversial, and suggested that consideration be given its deletion.

said

Mr. Adams/that "equitable treatment" did not establish a third standard of treatment in addition to national and most-favored-nation treatment.

Mr. Singer and Mr. Adams urged the Japanese representatives to regard "equitable treatment" as a guiding principle of justice under which the specific standards of national and most-favored-nation treatment are applied.

Mr. Yukawa asked if official notification involving rights and obligations of a national or company of the other party could be made public only in the Japanese language without violating the provision of equitable treatment. Mr. Bassin replied that under these circumstances the provisions for equitable treatment would not be violated.

RESTRICTED

RESTRICTED

(Classification)

Mr. Yukawa said that it was his understanding that the provision of equitable treatment could not be used to impose a discriminatory tariff against the goods of the other party on the grounds that the standards of wages or living of that party were lower than that of any third country. Mr. Yukawa added that this argument was made by some countries on the application of most-favored-nation and equitable treatment at meetings under the sponsorship of the League of Nations.

Mr. Bassin said that Mr. Yukawa's understanding was acceptable.

Mr. Yukawa expressed his appreciation for the explanations given him of the meaning of "equitable treatment" and stated that further study would be given this point by the Japanese representatives, pending which he would reserve his position regarding the acceptability of this term and Article I to the Japanese side. Having no further questions regarding this Article at the present time, Mr. Yukawa proposed that the discussion continue with Article II.

ARTICLE II

Mr. Yukawa stated that the Ministry of Foreign Affairs had studied the printed texts of various FCN Treaties entered into by the United States with other countries, and pointed to the inclusion of most-favored-nation treatment in other United States Treaties with respect to the rights of entry granted under Article II, paragraph 1. He proposed, therefore, the inclusion of the most-favored-nation treatment concept in this paragraph in a manner similar to that employed in the FCN Treaty between Italy and the United States.

With respect to the FCN Treaty between Italy and the United States, Mr. Bassin invited the attention of the Japanese representatives to Article XXIV, paragraph 7, of that particular treaty. Mr. Bassin pointed out that the most-favored-nation provision in the Treaty with Italy was very greatly modified by Article XXIV of the same treaty, so that the net result is the same as that of the standard draft under discussion. Mr. Bassin added that the technique of the Treaty with Italy in this connection could be improved to avoid misleading impressions. Mr. Singer added that the Department of State no longer considers that the most-favored-nation standard adds anything to a provision which deals with elementary human freedoms, and might, in fact, serve only to weaken it.

Mr. Otabe declared that the primary concern on the Japanese side was with clause (b) of paragraph 1 which reads "for other purposes subject to the laws relating to the entry and sojourn of aliens". He stated that unless a most-favored-nation standard were included in this clause the Japanese side would encounter great difficulties in Diet interpellations with respect to the rights of entry of Japanese into the United States, particularly in view of the Act of May 26, 1924, and its restrictions on Japanese immigration.

Mr. Yukawa suggested that "most-favored-nation treatment" be extended to the matters mentioned in paragraph 1, and added that if under the existing laws

RESTRICTED

RESTRICTED

(Classification)

of the United States it is impossible to insert the most-favored-nation clause without reservation, the date of the enforcement of the foregoing treatment may be put off, by a separate arrangement, to some later date when the present immigration laws of the United States are revised.

Mr. Singer repeated his previous statement to the effect that the most-favored-nation standard adds nothing to a provision dealing with elementary human freedoms. Mr. Adams then referred to the remarks made previously by Mr. Waring on the subject of immigration bills presently under consideration by the Congress of the United States. He added that the House of Representatives' and Senate Judiciary Committees have both now reported on these immigration bills, thus making Congressional action on the bills possible in the not too distant future. Mr. Singer referred to Mr. Waring's statement that the FCN Treaty would be paramount over all existing statutes and state legislation, and added that it would therefore assure the right to enter and remain in the territories of the other party in accordance with paragraph 1, Article II. Mr. Adams stated that in view of these remarks it was believed that the suggested "separate arrangement" was unnecessary and inappropriate.

Mr. Yukawa stated that further consideration would be given by the Japanese side to Article II, paragraph 1, in the light of the comments made by Mr. Waring and the other American representatives, and suggested that further discussion on this point be deferred for subsequent meetings.

Mr. Adams proposed that the present meeting adjourn and that discussions be resumed on Article II when convenient to the Japanese representatives. Mr. Yukawa suggested that the next meeting be held on Wednesday, February 27, 1952, a date which was acceptable to both sides.

RESTRICTED

MEMORANDUM OF CONVERSATION

Subject: Informal Discussions on the United States Standard Draft
Treaty of Friendship, Commerce and Navigation

Participants: For the Ministry of Foreign Affairs:

Mr. Morio YUKAWA, Director of the Bureau of Economic Affairs
Mr. Kenichi OTABE, Vice Director, Bureau of Economic Affairs
Mr. Haruki MORI, Chief, First Section, Bureau of Economic Affairs
Mr. Masao OSATO, Chief, Fourth Section, Treaty Bureau
Mr. Takeshi KANEMATSU, Secretary, First Section, Bureau of
Economic Affairs
Mr. Kay MIYAGAWA, Secretary, First Section, Bureau of Economic
Affairs

For the Office of the United States Political Adviser, Japan:

Mr. Jules BASSIN, Legal Attache
Mr. Dudley G. SINGER, Commercial Attache
Mr. Robert W. ADAMS, Second Secretary

Place: Office of the United States Political Adviser, Tokyo, Japan.

Date: Wednesday, February 27, 1952.

SECOND INFORMAL MEETING

Mr. Adams stated that he had been asked to express Ambassador Sebald's and Mr. Waring's concern regarding the misunderstanding arising from newspaper reports on the present informal discussions, which have been identified erroneously by the press as "formal negotiations". Mr. Adams submitted for Mr. Yukawa's consideration a draft press release intended to clarify the informal and technical-level status of the present discussions.

Mr. Yukawa read the draft release and then stated that there was no objection to its issuance as a joint press release. It was agreed that the statement quoted below, would be released jointly at 6:00 p.m., Wednesday, February 27, 1952.

"The Ministry of Foreign Affairs of the Japanese Government and the Office of the United States Political Adviser in Tokyo said today that there appears to be some misunderstanding in the press concerning the purpose of the informal discussions which are now being carried out in connection with the eventual negotiation of a Treaty of Friendship, Commerce and Navigation between Japan and the United States. The Ministry of Foreign Affairs and the Office of the United States Political Adviser emphasized that the present informal discussions are limited solely to an exchange of views on the technical level, with the limited objective of ascertaining areas of agreement between the two Governments wherever possible, and further, of determining those points regarding which differences of views may exist.

"It was further said that upon the conclusion of the present preliminary technical discussions it was expected that a conference will be convened to negotiate a mutually satisfactory treaty for submission to and eventual ratification of the two Governments in accordance with their respective constitutional processes."

Mr. Yukawa stated that he wanted to emphasize the fact that when the Japanese representatives prepared their position on the standard draft provisions, there were a number of points on which they had encountered difficulties in adjusting the various opinions of the Ministries concerned. The Japanese side therefore was not in a position to give a definite answer to any changes to their proposals concerning the standard draft without further reference to the Ministries. Mr. Yukawa further stated that it would sometimes be necessary to obtain the specific approval of the Minister of Foreign Affairs and that a decision could in some cases be made only after the whole picture of the FCN Treaty is made clear. He suggested that when such points in question are encountered, they be set aside for future discussion during the present informal conversations. Mr. Yukawa suggested that after all the articles in the standard draft have been discussed a clear picture would emerge as to the points on which agreement had been reached as well as on those where differences of opinions remained. Mr. Yukawa added that he would then be in a position again to consult with the various Ministries concerned, and that agreement on some of the points originally set aside might then be possible during the latter stages of the present informal discussions.

Mr. Adams thanked Mr. Yukawa for his statement and added that this view was shared by the American side, as evidenced by Mr. Waring's remarks on February 25 regarding the ad referendum status of the present meetings. Mr. Adams then proposed that the discussion on Article II be resumed.

ARTICLE II

Mr. Yukawa pointed out that Article II extends entry rights to persons "carrying on trade between the territories of the two parties and engaging in related commercial activities". He added that it was not clear what types of business activities may be covered by the phrase "related commercial activities".

Mr. Singer replied that the phrase "engaging in related commercial activities" as used in Article II is a statement regarding one of the purposes of entry and sojourn covered by this Article, and is not intended to define the types of commercial activities which are properly covered by, and subject to, the provisions of Articles VII and VIII. He stated that individuals engaging in the activities covered by Articles VII, paragraph 1, and VIII, paragraph 1, are entitled to enter the territories of the other party under the provisions of Article II, paragraph 1 a.

Mr. Yukawa stated that Mr. Singer's explanation of this phrase was clear and that the use of the phrase in question in Article II was now understood and accepted by the Japanese side.

Mr. Yukawa then stated; that, in view of the principles set forth in the Preamble of the standard draft, most-favored-nation treatment should be accorded

with respect to the basic personal rights mentioned in paragraph 2, Article II. He added that this paragraph provides that basic personal rights are subject to measures necessary to maintain public order and to protect the public health, morals and safety, but that there is no guarantee against discriminatory treatment as compared with the nationals of any third country.

Mr. Bassin, in reply, referred to a previous statement by Mr. Singer at the February 25 meeting regarding the Department of State's opinion that the most-favored-nation standard adds nothing to a provision dealing with elementary human rights, and might serve only to weaken it. Mr. Bassin added that, under paragraph 2, certain basic human freedoms are granted without restrictions, and that it was superfluous therefore to qualify these freedoms by making them subject to most-favored-nation treatment.

Mr. Yukawa stated that the explanation given regarding this point was satisfactory and he agreed that paragraph 2 was adequate in its present form.

Mr. Adams then asked whether there were any further questions on Article II. Receiving a negative reply from Mr. Yukawa and Mr. Otabe, Mr. Adams then stated that it appeared that only the point raised at the February 25 meeting (i.e. the Japanese suggestion that a most-favored-nation treatment clause be inserted in Article II, paragraph 1, with reference to "for other purposes subject to the laws relating to the entry and sojourn of aliens") remained pending.

Mr. Yukawa replied that this was correct, and he proposed that discussions continue with Article III.

ARTICLE III

Mr. Yukawa stated that the word "molestations" in paragraph 1, Article III, was not clear to the Japanese side and suggested that the adjective "unlawful" be inserted, since the phrase "unlawful molestations" was more readily understandable to the Japanese representatives.

OK / Mr. Adams replied that there appeared to be no objection to the acceptance of the word "unlawful" for the purposes of these informal discussions.

Mr. Otabe then raised the question as to whether the word "molestations" referred to undue molestations on the part of policemen or other competent officials or whether it referred to all manner of molestations at the hands of private individuals. He added that acts of the latter kind could not always be prevented by the Government despite the safeguard of normal protection by the police.

7 / Mr. Adams replied that "molestations" as mentioned in this Article refers to molestations by Government officials, as well as those resulting from concerted actions by a group of private citizens which may have the support of the Government, or of which the Government is aware and can prevent. "Molestations" by private persons, except as mentioned above, are not covered by this Article, since, for example, a person unduly molested by a neighbor has access to the courts for relief.

Mr. Yukawa replied that he appreciated the clarification given regarding the term "molestations", and added that the Japanese side reserved its position pending further consideration of this point with reference to the concept of international law, which he proposed to discuss next.

Mr. Yukawa then stated that it was recognized that all persons should receive the most constant protection and security. He added that the standard draft declares that this constant protection and security should be "in no case less than that required by international law", thus leaving the standard for protection and security to the rules of international law. However, Mr. Yukawa added, the standard of treatment in the FCN Treaty should be stated as clearly as possible, and, moreover, there appeared to be no justifiable reason for setting up for aliens a standard (i.e. "international law") different from that established for one's own nationals. Mr. Yukawa suggested that this phrase be amended to read "shall receive the most constant protection and security, in no case less than that accorded, in like circumstances and conditions, to nationals of such other party".

Mr. Bassin replied that reference to the international law standard is usual in treaties entered into by the United States. He added that the basic standard for diplomatic protection of citizens abroad is international law, rather than local law.

Mr. Yukawa emphasized that the Japanese legislations and the judiciary system, modeled after those of the United States, are quite complete and progressive. Therefore, with respect to the relations between the United States and Japan, the standard of national treatment should be satisfactory to both parties.

Mr. Yukawa then stated that the phrase in paragraph 2, "is taken into custody" should be amended to read "is accused of crime and taken into custody", because the subsequent clauses should apply only when a person is detained on suspicion of crime and under a warrant of arrest.

Mr. Bassin replied that the additional phrase, "accused of crime", although previously used in some United States treaties, was now regarded as limiting unjustifiably the protection sought in paragraph 2. He added that the phrase "accused of crime" is therefore no longer contained in the Department of State's standard draft on the FCN Treaty.

Mr. Yukawa stated that persons might be taken into administrative or protective custody, such as drunken sailors who might be detained overnight in order to protect their lives or property. Mr. Otabe stated that it was in connection with such protective custody cases as those involving overnight detention that the Japanese side questioned the need for advising the appropriate consular official. Mr. Yukawa said that this also raised a question regarding the obligation that the consular officer "be immediately notified" as provided in paragraph 2. Mr. Yukawa added that it would be impossible in some cases to make immediate notification since the request might be made to the arresting police officer at a very late hour. He inquired, therefore, as to the meaning of the phrase "be immediately notified".

Mr. Adams replied that in certain cases notification to the appropriate consular officers might be delayed for several hours or until the next morning after the detained person's request. He added that the phrase "be immediately notified" was understood to mean appropriate notification at the earliest possible and practicable moment.

Mr. Otake then requested a definition of the word "accusations" as contained in paragraph 2 (b) of Article III. Mr. Bassin replied that this word means a charge for violation of law, but does not necessarily imply a formal indictment. Mr. Bassin added that a person might be taken into custody without being accused of a crime, for example, as a material witness or awaiting deportation proceedings. He further stated that it was reasonable for a person so detained to want to notify his consular representative, and that the present phrase in paragraph 2, "taken into custody", would permit such notification, whereas the additional phrase suggested by the Japanese, "is accused of crime", would unnecessarily restrict a person's right in this regard.

In reply to inquiry by Mr. Yukawa, Mr. Bassin stated that the provisions of 2 (a) of Article III applied to both administrative and criminal cases, and that the provisions of 2 (b) and (c) applied only to criminal cases. With respect to paragraph 2 (d), Mr. Bassin stated that it applied to criminal cases, but that the principle would be extended to cover non-criminal cases where a person is in the custody and entitled to proper counsel, as for example, in deportation proceedings.

Mr. Yukawa then stated that all points raised by his associates and himself with reference to paragraph 2 were now clear and acceptable to the Japanese side, with the exception of the point involving his suggestion that the phrase "is accused of crime and" be inserted before "taken into custody". Mr. Yukawa added that this change would be consistent with the phraseology employed in some of the FCN Treaties which the United States has concluded with other countries.

Mr. Adams then inquired whether the point just mentioned by Mr. Yukawa and the Japanese reservation with respect to the phrase "international law" in paragraph 1 were the only pending questions regarding Article III. Mr. Yukawa replied in the affirmative, stating that both these points would receive further study on the Japanese side for subsequent discussion and he proposed that the meeting continue with the next Article.

ARTICLE IV

Mr. Yukawa stated that he understood that relief systems, such as public assistance for helpless persons, children's welfare, and similar public assistance programs which are paid out of the appropriations of the central or local governments, are not included within the meaning of the "compulsory systems of social security" as used in paragraph 2 of the present Article.

Mr. Bassin stated that Mr. Yukawa's understanding in this regard was correct. He added that the wording employed, "compulsory system of social security", reflects the characteristics of the United States system intended to be covered by the FCN Treaty, and ensures that there is no misunderstanding as to the types of benefits which are not covered by the Treaty, such as State relief and public

assistance programs. The compulsory system of social security requires the participation of its beneficiaries, who contribute to its financing through payroll deductions fixed by law, and it falls in the category of an "insurance", as opposed to a "charity", system.

Mr. Otake requested an interpretation of the phrase "arising out of and in the course of employment" as used in paragraph 1.

Mr. Adams replied that - for the sake of mutual understanding in these informal discussions - this phrase might be regarded as meaning "resulting from a person's work during employment", although the phraseology of paragraph 1 is broader and more flexible. Mr. Bassin added that the phrases employed in paragraph 1 were adopted by the Department of State on the advice of a leading expert in the field of workmen's compensation, which is principally or exclusively under the jurisdiction of the various States in the United States. The phraseology of paragraph 1 is designed to grant treaty right to the maximum range of workmen's compensation covered by the various State laws in the United States.

Mr. Bassin added that the words "disease" and "due to the nature of employment" are examples which reflect advanced legislation of certain States correcting inadequacies of earlier laws. Tuberculosis, for example, had not previously been a compensable disability because - although a consequence of the work engaged in by the victim - it was not a "bodily injury" and was not technically speaking contracted "in the course of employment". Mr. Singer stated that the phraseology employed in the standard draft assists the authorities of the various States in the United States to understand more readily what their obligations are under an FCN Treaty.

Mr. Otake then stated that the Japanese National Health Insurance system is not compulsory, and that it is not generally open to participation by aliens. He inquired whether such a system was regarded as coming within the scope of Article IV.

Mr. Singer replied that a health insurance system of this type would not be regarded as falling under Article IV. Mr. Adams stated that it was his understanding that the workmen's compensation and social security systems of Japan and the United States were similar, although there are doubtlessly many technical points of difference. Mr. Adams added that Article IV is not intended to define the various types of legislation covering these systems in either country, but rather to assure the extension of national treatment to the nationals of the other Party.

Mr. Yukawa then stated that the definitions and explanation given him were satisfactory, resolving the various questions raised by the Japanese representatives. Mr. Yukawa added that the provisions of Article IV had been made clear to the Japanese side, and that this Article was acceptable without change.

Mr. Singer suggested adjournment, and it was agreed that the next meeting would be on Friday, February 29th, at 2:00 p.m., with discussions to begin on Article V of the standard draft.

- - -